

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

v.

06-cr-126-bbc

TIMOTHY CLARK,

Defendant.

In an order entered on December 24, 2008, I denied defendant Timothy Clark's motion pursuant to 18 U.S.C. § 3582 and Amendment 709 to the Sentencing Guidelines. Thereafter, on January 12, 2009, defendant filed a timely Rule 59 motion, which I denied on January 20, 2009. Now defendant has filed a notice of appeal and motion to proceed on appeal in forma pauperis.

As I explained in both the December 24, 2008 and January 20, 2009 orders, defendant is not eligible for a sentence reduction under § 3582 because his sentence was determined by his status as a career offender and not by drug quantity. His argument to the contrary is baseless. Because defendant wants to raise a legally frivolous argument on appeal, I must certify that his appeal is not taken in good faith.

Pursuant to Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that defendant Timothy Clark's request for leave to proceed in forma pauperis on appeal from this court's orders of December 24, 2008 and January 20, 2009 is DENIED. I certify that defendant's appeal is not taken in good faith.

Entered this 2d day of February, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge